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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/737,396

12/15/2003

Gary R. Bledsoe

61513/84290

8896

20873

7590

05/04/2006

LOCKE LIDDELL & SAPP LLP

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EXAMINER

MOHANDESI, JILA M

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/737,396

Applicant(s)

BLEDSOE, GARY R.

Examiner

Jila M. Mohandesi

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 05-24-04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of invention I in the reply filed on February 28, 2006 is acknowledged. The traversal is on the ground(s) that the claims as amended are not distinct and that there is no basis in the record for finding the two groups to be distinct. This is found to be persuasive therefore, the restriction requirement is withdrawn and all the claims were examined as follows.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a cover for said sole portion as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either

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"Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-5 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Crispin (4,771,768). Crispin '768 discloses a device for treatment of foot comprising: a boot comprising a shell (U-shaped shell with side walls 40 and 42), a sole (slip resistant sole 44) on the bottom of said shell and a footplate (rigid foot supporting interior surface 46) on top of said shell; two uprights (metal uprights 54 and 56) connected to said shell; a cuff (flexible breathable foam padded upper portion 22) to secure said boot to said foot; wherein said sole has a bottom shaped to allow a near normal walking gait; and wherein said foot plate places said foot in an amount of dorsiflexion. See Figures 1-4 embodiments.

With respect to claim 4, note leg straps (104, 106 & 108).

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5. Claims 1-4 and 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Bledsoe et al. (Pub. No. US 2003/0196352) herein after Bledsoe/0196352.

Bledsoe/0196352 discloses a device for treatment of foot comprising: a boot comprising a shell (walking shell 18), a sole (elastomeric rubber walking tread 22) on the bottom of said shell and a footplate (midsole 28) on top of said shell; two uprights (upright struts 38) connected to said shell; a cuff (spongy foam bootie 14) to secure said boot to said foot; wherein said sole has a bottom shaped to allow a near normal walking gait; and wherein said foot plate places said foot in an amount of dorsiflexion. See Figures 1-4f embodiments.

With respect to claim 4, note leg straps (attachment straps 64).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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8. Claims 6-10 and 18-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crispin '768 in view of Powell et al. (5,887,591). Crispin '768 as described above discloses all the limitations of the claims except for wedges placed on said footplate to increase the amount of dorsiflexion and a heel strap. Powell '591 discloses a device for treatment of plantar fasciitis by increasing the amount of dorsiflexion using a variety of wedges (lifting members 100) having different sizes and angles that can be used interchangeably on the footplate during treatment. The angles range from about 10 degrees to about 30 degrees. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a variety of wedges to the device of Crispin '768 as taught by Powell '591 to better treat plantar fasciitis by increasing the amount of dorsiflexion .

With respect to claims 7 and 24 whether the securement means is hook and loop or adhesive or any other art recognized equivalent is an obvious matter of choice, such as cost and ease of manufacturing.

With respect to claims 9 and 25, Powell '591 discloses a heel strap to better secure the device to the leg of the wearer. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a heel strap to the device of Crispin '768 as taught by Powell '591 for a better securement of the device to the leg of the wearer.

With respect to the angle of dorsiflexion, Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify and adjust the angle of dorsiflexion, since it has been held that where the general conditions of a

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claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claims 27-28, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 35, official notice is taken that it is old and conventional to provide covers for sole portion of device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the official notice to provide a cover for the sole portion of devices.

The method claims 30-36 is submitted to read on those steps inherent in the use of Crispin '768 device as modified.

9. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crispin '768.

With respect to claims 15-16, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 17, official notice is taken that it is old and conventional to provide covers for sole portion of device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the official notice to provide a cover for the sole portion of devices.

10. Claims 5-10 and 18-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bledsoe/0196352 in view of Powell et al. (5,887,591).

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Bledsoe/0196352 as described above discloses all the limitations of the claims except for wedges placed on said footplate to increase the amount of dorsiflexion and a heel strap. Powell '591 discloses a device for treatment of plantar fasciitis by increasing the amount of dorsiflexion by using a variety of wedges (lifting members 100) having different sizes and angles that can be used interchangeably on the footplate by increasing dorsiflexion during treatment. The angles range from about 10 degrees to about 30 degrees. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a variety of wedges to the device of Bledsoe/0196352 as taught by Powell '591 for better treating the plantar fasciitis by increasing the amount of dorsiflexion.

With respect to claims 7 and 24 whether the securement means is hook and loop or adhesive or any other art recognized equivalent is an obvious matter of choice, such as cost and ease of manufacturing.

With respect to claims 9 and 25, Powell '591 discloses a heel strap to better secure the device to the leg of the wearer. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a heel strap to the device of Bledsoe/0196352 as taught by Powell '591 for a better securement of the device to the leg of the wearer.

With respect to the angle of dorsiflexion, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify and adjust the angle of dorsiflexion, since it has been held that where the general conditions of a claim



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are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claims 27-28, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 35, official notice is taken that it is old and conventional to provide covers for sole portion of device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the official notice to provide a cover for the sole portion of devices.

The method claims 30-36 are submitted to read on those steps inherent in the use of Bledsoe/0196352 device as modified.

11. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crispin '768.

With respect to claims 14-16, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 17, official notice is taken that it is old and conventional to provide covers for sole portion of device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the official notice to provide a cover for the sole portion of devices.

### **Conclusion**

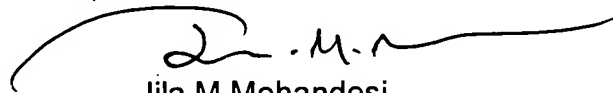
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12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are devices analogous to applicant's instant invention.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
May 02, 2006